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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

PAUL S. DAVIS,

Appellant

v.

STATE OF MICHIGAN,
DEPARTMENT OF THE TREASURY,

Appellee

ON APPEAL FROM THE
COURT OF APPEALS OF MICHIGAN

# JURISDICTIONAL STATEMENT

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39 pp

## QUESTION PRESENTED

Whether Section 30(1)(h) of the Michigan Income Tax Act [MCLA 206.30(1)(h); MSA 7.557(130)(1)(h)],which completely exempts from Michigan income tax retirement benefits paid to retirees of the State and its political subdivisions, but gives no equivalent exemption to retirement benefits paid to retirees of the Federal Government, is invalid, as applied to Federal retirees, as being in violation of the Federal statute (4 U.S.C. 111), which permits State taxation of compensation of Federal employees only if the taxation does not discriminate against the employee because of the source of the compensation.

## PARTIES

The names of all parties to the proceeding are set forth in the caption.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

---

PAUL S. DAVIS, Appellant

v.

STATE OF MICHIGAN, DEPARTMENT OF THE TREASURY, Appellee

---

ON APPEAL FROM THE

COURT OF APPEALS OF MICHIGAN

---

## JURISDICTIONAL STATEMENT

Paul S. Davis, Appellant herein, a member of the Bar of this Court, appearing pro se, appeals to this Court from the final judgment of the Court of Appeals of Michigan, dated May 5, 1987.

## OPINIONS BELOW

Davis v. Department of Treasury, 160 Mich. App. 98, 408 N.W. 2d 433 (May 5, 1987) (set forth in Appendix A).

Oral Opinion of the Michigan Court of Claims, not reported (set forth in Appendix C).

## GROUND FOR JURISDICTION

Appellant initiated this case by filing in the Michigan Court of Claims his Complaint for Refund of Income Taxes. In his Complaint Appellant sought a refund of Michigan income taxes paid on his Federal retirement benefits. Appellant specifically alleged that such taxation was invalid under the Federal statute (4 U.S.C. 111), and sought a judgment that the Michigan Income Tax Act, in so far as it purported to tax Federal retirement benefits, was invalid under Federal law. The Court of Claims and the Court of Appeals of Michigan upheld the validity of the Michigan Income Tax Act as applied to Appellant and ruled for the Defendant (here Appellee) Department of the Treasury, State of Michigan.

Appellant filed with the Supreme Court of Michigan an Application for Leave to Appeal from the Judgment of the Court of Appeals. Such leave to appeal was denied by order of the Michigan Supreme Court on September 28, 1987 (Appendix B).

Appellant filed a Notice of Appeal to this Court with the Court of Appeals of Michigan on December 4, 1987 (Appendix E). Copies of the Notice of Appeal were filed on the same day with the Michigan Supreme Court and with the Michigan Court of Claims.

Appellant invokes the jurisdiction of this Court pursuant to 28 U.S.C. 1257(2). The issue of the repugnancy of the Michigan Income Tax Act, as applied to Federal retirees, was properly raised at each level of State court proceedings and was expressly considered and decided by the Michigan Court of Appeals, the highest State Court exercising jurisdiction in this proceeding. This Court therefore has appellate jurisdiction.

## STATUTES INVOLVED

Michigan Income Tax Act, Section 30(1)(h) [1967 Public Act No. 281; M.C.L.A. 206.30 (1)(h); M.S.A. 7.557(130)(1)(h)].

4 U.S.C. 111 (Section 4 of Act of April 12, 1939, codified on September 6, 1966; 80 Stat. 808).

Federal Civil Service Retirement Act (5 U.S.C. 8331 et seq.), Section 8339(a).

The foregoing statutory provisions are set forth in Appendix F.

## STATEMENT OF THE CASE

Appellant is a former employee of the United States Government, and served as such from 1938 to 1942, from 1946 to 1956, and from 1974 to 1980. Based on his Government service, Appellant receives Federal Civil Service Retirement benefits, authorized pursuant to the Federal Civil Service Retirement Act (Act of July 31, 1956, as amended; 5 U. S. C. 8331 et seq.).

In filing his Michigan Income Tax returns for each of the tax years 1979 to 1984, inclusive, Appellant followed the instructions accompanying the forms prescribed by the Michigan Department of the Treasury, Appellee herein, and included all of his Federal retirement benefits in his taxable income. Subsequently Appellant filed amended tax returns for each of those years, in which he excluded his Federal retirement benefits from taxable income. In the amended returns and accompanying petitions and claims to the Michigan Revenue Commissioner Appellant petitioned for refunds of his Michigan income tax paid for those years, in so far as based on his Federal retirement benefits. The Revenue Commissioner denied Appellant's claims for refund. The amounts of such claims for refund for the years 1979 to 1984 aggregated $4,299.53.

Following denial of his claims for refund, Appellant filed in the Michigan

Court of Claims a Complaint seeking recovery of the Michigan income taxes paid on his Federal retirement benefits. In his claims for refund filed with the Revenue Commissioner and in the Court of Claims Appellant relied on the Federal statute, 4 U.S.C. 111, and took the position that the Michigan Income Tax Act, by completely exempting Michigan retirement benefits while taxing Federal retirement benefits, was invalid as being inconsistent with the Federal statute.

In the Court of Claims the case was heard on motions for summary disposition, since there was no dispute on the facts. After the filing of briefs and argument, the Judge of the Court of Claims rendered an oral Opinion, on October 30, 1985, in favor of the Appellee (Appendix C). The Michigan Court of Appeals affirmed the Court of Claims (Appendix A).

## THE QUESTION PRESENTED IS SUBSTANTIAL

The question of the validity of the Michigan Income Tax Act, in its application to Federal retirement benefits, depends on the interpretation of 4 U.S.C. 111. That Federal statute permits the non-discriminatory taxation by States of Federal compensation, and is as follows:

> "The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation." (Underscoring added).

### Federal Retirement Benefits Are Within the Scope of 4 U.S.C. 111

Appellant's Civil Service Retirement benefits are paid pursuant to the Civil Service Retirement Act (Act of July 31, 1956, as amended; 5 U.S.C. 8331 et seq.).

The amount of Appellant's retirement benefit is computed under the provisions of 5 U.S.C. 8339(a), and is based on salary and years of service (see Appendix F). As stated by the Court of Appeals for the Sixth Circuit in Hogan v. United States, 513 F. 2d 170, 172 (1975), "the amount of the annuity payable on retirement is "directly related to the earnings and years of service of the individual employee." (Underscoring added).

Appellee argued in the Michigan courts that since Appellant is no longer an officer or employee of the Federal Government the provisions of 4 U.S.C. 111 do not apply to him. The Court of Claims and the Court of Appeals accepted that argument. It is submitted that such an interpretation is incorrect, since the scope of the statute is not limited to current Federal rmployees.

The consent expressed in 4 U.S.C.

111 is not phrased in terms of the pay or compensation of a present officer or employee. On the contrary, it expressly covers the "pay or compensation for personal services as an officer or employee of the United States." (Underscoring added). Appellant's retirement annuity is clearly a part of his compensation for his past Government work as an employee of the United States.

The word "compensation" is a broad concept, and is not limited to current salary. In Clark v. United States, 691 F. 2d 837 (1982), the Court of Appeals for the Seventh Circuit reviewed the history and purposes of the Federal Retirement law. The Court stated that the purpose of this statute "is to allow the federal government to compete with the private sector by offering

federal employees an attractive retirement plan." (691 F. 2d at page 842). The Court's opinion went on to refer to the retirement system as "a deferred compensation plan," designed to encourage employees to enter and remain in Government service (page 842; underscoring added).

Similarly, in Kizas v. Webster, 707 F. 2d 524, 536 (D.C. Circuit, 1983), the Court referred to retirement benefits as being one incident of employee compensation. Again, in the recent decision of the Court of Appeals for the Federal Circuit in Zucker v. United States, 758 F. 2d 637, 639 (1985), cert. den. 474 U.S. 842, 106 S.Ct. 129, 88 L.Ed 2d 105 (1985), the Court referred to the legislative history of the Retirement Act, during which the pension benefits were characterized as "deferred wages."

The foregoing authorities demonstrate that Federal Retirement benefits constitute additional compensation for

past services to the Government. Accordingly they are clearly within the scope of the language of 4 U.S.C. 111, covering "compensation for personal service as an officer or employee of the United States," even though not actually paid until after retirement.

The Michigan Income Tax Act Discriminates Against Federal Retirees, in Violation of 4 U.S.C. 111.

The Michigan Income Tax Act discriminates against Federal retirees because of the source of their compensation, in violation of the express language of 4 U.S.C. 111. The Michigan Act taxes Federal retirement benefits, subject only to a limited exemption set forth in subparagraph (iv) of Section 30(1)(h) of that Act. On the other hand, the Michigan Act expressly exempts the full amount of retirement benefits received from a public retirement system of the State or any of its political subdivisions (subparagraph (i) of Section

30(l)(h)). Clearly this constitutes a discrimination against Federal retirees based on the source of their compensation.

In the recent case of Memphis Bank & Trust Company v. Garner, 459 U.S. 392, 103 S.Ct. 692, 74 L.Ed. 2d 562 (1983), this Court held invalid a Tennessee statute taxing bank earnings, which was defined to include interest on United States obligations but did not include interest on State obligations. The Court held that this statute discriminated "in favor of securities issued by Tennessee and its political subdivisions and against federal obligations," and that this constituted an unconstitutional discrimination. The Court concluded that "the Tennessee bank tax impermissibly discriminates against the Federal Government and those with whom it deals." (459 U.S. at 399).

The Michigan Court of Appeals in its Opinion in this case discussed the

distinction in the law "between State retirees and all other retirees," and treated it in terms of the equal protection clause. The Court found a "legitimate state objective" (Appendix A, page A7). Appellant does not question the right of the State to favor its own retirees as against non-Federal retirees. But Appellant submits that the Federal law (4 U.S.C. 111) forbids discrimination against Federal retirees.

Two other decisions of this Court may be cited which emphasize that a State may not discriminate against Federal activities. Phillips Chemical Company v. Dumas Independent School District, 361 U.S. 376, 80 S.Ct. 474, 4 L.Ed.2d 384 (1960), cited in the Memphis case, supra, invalidated a tax which was imposed on lessees of property owned by the Federal Government, but which exempted lessees of property

owned by the State and its political subdivisions. The Court considered this to be a "substantial and transparent" discrimination against the Government and its lessees (361 U.S. at page 387).

Similarly, in Moses Lake Homes v. Grant County, 365 U.S. 744, 81 S.Ct. 870, 6 L.Ed.2d 66 (1961), this Court invalidated a tax on lessees of Federal property, where their leaseholds were assessed at the full value of the land and improvements, but other leaseholds were assessed only at their fair market value excluding the value of the improvements.

The case before this Court shows the same type of discrimination against Federal retirees as compared with retirees of State and local Michigan governments. Application of the Michigan Income Tax Act to the retirement benefits of Federal retirees is therefore clearly invalid under the decisions of this Court.

## An Important Federal Question Is Presented

The question in this case involves the interpretation of an important Federal statute. Although this case concerns the validity of the Michigan tax law in its application to Federal retirees in Michigan, the interpretation of 4 U.S.C. 111 may also affect Federal retirees in other States.

For example, the State of Georgia has an income tax law similar to Michigan's in exempting State retirees while taxing Federal retirees [Code of Georgia Annotated, Section 91A-3607(a)(4)(A)]. In Waldron v. Collins, 788 F.2d 736 (1986), cert. den. ___ U.S. ___, 107 S.Ct. 274, 93 L.Ed.2d 250 (1986), the Court of Appeals for the Eleventh Circuit considered a case brought in a Federal District Court in Georgia by Federal retirees claiming discrimination. The Court of Appeals held that the plaintiffs had an adequate remedy in the State courts and

should have proceeded there. Accordingly the Court in the Waldron case did not reach the substantive question of the validity of the Georgia statute.

The State of Virginia also has a provision in its income tax law, similar to those of Michigan and Georgia, exempting its own retirees but taxing Federal retirement benefits [Code of Virginia, Title 58, Article 1, Section 322 C (3)]. On the other hand, Alabama and Kansas under their income tax laws exempt both their own and Federal retirees [Code of Alabama, Section 40-18-19(a)(1),(2)and (4); Kansas Statutes Annotated, Chapter 79, Section 32-117(c)(ii)and (vii)].

The existence of other State laws which may involve the interpretation of 4 U.S.C. 111 emphasizes the importance of the legal issues in this proceeding.

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On the basis of the foregoing, it is submitted that the legal question

presented in this case is substantial. It involves an important matter of the interpretation of a Federal statute which should be resolved by this Court.

## RELIEF REQUESTED

Appellant prays that this Court note its probable jurisdiction over this appeal, and that plenary consideration be given to this case with opportunity for the filing of briefs and oral argument.

Respectfully submitted,

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December 21, 1987

APPENDIX A

OPINION OF THE MICHIGAN

COURT OF APPEALS

(Reported in Davis v. Department of the Treasury, 160 Mich. App. 98, 408 N.W. 2d 433.)

| | | |
|---|---|---|
| PAUL S. DAVIS,<br>Plaintiff-Appellant | ) | May 5, 1987 |
| v. | ) | No. 88776 |
| STATE OF MICHIGAN,<br>DEPARTMENT OF TREASURY<br>Defendant-Appellee | ) | |

Paul S. Davis, in propria persona.

*Frank J. Kelley,* Attorney General, *Louis J. Caruso,* Solicitor General, and *Richard R. Roesch* and *Robert C. Ward, Jr.,* Assistant Attorneys General, for defendant.

Before: D. E. HOLBROOK, JR., P.J., and WAHLS and G. W. CROCKETT, III,* JJ.

G. W. CROCKETT, III, J. Plaintiff appeals as of right from the order of the Court of Claims granting summary disposition to the Michigan Department of Treasury pursuant to MCR 2.116(I)(2) .

* Recorder's Court judge, sitting on the Court of Appeals by assignment.

The court upheld the department's decision to deny plaintiff an income tax refund in the amount of $4,299.53, for the tax years 1979 through 1984, finding that the taxation of plaintiff's federal retirement benefits was lawful.

The facts necessary for the resolution of this appeal are undisputed. Plaintiff is a resident of Michigan and retired federal government employee who receives federal civil service retirement benefits pursuant to 5 USC 8331 *et seq.* The issue on appeal is whether the Michigan Department of Treasury has the authority to impose an income tax on plaintiff's federal retirement benefits. Under the Michigan Income Tax Act, MCL 206.1 *et seq.*; MSA 7.557(101) *et seq.*, plaintiff was permitted to deduct from his taxable Michigan income no more than $7,500 of the amount he received in federal retirement benefits. MCL 206.30; MSA 7.557(130). By comparison, the same statutory provision permits state retirees receiving benefits from a public retirement system of the state or its political subdivisions to deduct retirement benefits in full. It is this differing tax treatment of retirement benefits which forms the basis of plaintiff's refund claims.

In 1984, plaintiff filed amended income tax returns for the tax years 1979 through 1982, claiming that he was entitled to a refund because his federal retirement benefits were allegedly not subject to income taxation by the State of Michigan. Plaintiff's refund requests were denied and he filed a complaint in the Court of Claims. Refund requests for tax years 1983 and 1984 were later added to the complaint by consent. Plaintiff asserted that the state tax was discriminatory as to source and therefore unlawful under federal law. The Court of Claims rejected plaintiff's arguments

and granted summary disposition to the department.

The department's authority to impose a tax on retirement benefits under Michigan law is provided for in MCL 206.30; MSA 7.557(130). As amended in 1984, the statute provides in relevant part:

> (h) Deduct to the extent included in adjusted gross income:
>
> (i) Retirement or pension benefits received from a public retirement system of or created by an act of this state or a political subdivision of this state.
>
> (ii) Any retirement or pension benefits received from a public retirement system of or created by another state or any of its political subdivisions if the income tax laws of the other state permit a similar deduction or exemption or a reciprocal deduction or exemption of a retirement or pension benefit received from a public retirement system of or created by this state or any of the political subdivisions of this state.
>
> (iii) Social security benefits as defined in section 86 of the internal revenue code.
>
> (iv) Retirement or pension benefits from any other retirement or pension system as follows:
>
> (A) For a single return, the sum of not more than $7,500.00.
>
> (B) For a joint return, the sum of not more than $10,000.00.

The State Employees' Retirement Act, MCL 38.1 *et seq.*; MSA 3.981(1) *et seq.*, which predates the MITA, also exempts from taxation the right of a person to a pension or retirement allowance accruing pursuant to the act. Further, the Michigan Constitution provides that the accrued financial benefits of each pension plan and retirement system of this state and its political subdivisions are declared to be contractual obligations thereof

which cannot be diminished or impaired. Const 1963, art 9, § 24. Michigan law does not extend similar status to federal pensions.

Initially, plaintiff argues on appeal that the Federal Public Salary Act of 1939 as amended, 4 USC 111, prohibits the discriminatory tax treatment of federal pensions which allegedly is present in the MITA. That federal statute provides:

> The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, *if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.* [Emphasis added.]

The Court of Claims in this case determined that plaintiff was not an employee within the meaning of the above statute and therefore was not entitled to its protection. Plaintiff contends on appeal that the statute embraces both present and former employees. We agree with the Court of Claims.

By enacting 4 USC 111, Congress intended that federal employees should contribute to the support of their state and local governments, which confer upon them the same privileges and benefits which are accorded to persons engaged in private occupations. *United States v City of Pittsburgh,* 757 F2d 43 (CA 3, 1985). However, § 111 limits its coverage to federal officers or employees. The term employee has been defined as embracing only those who work for another for hire. *Allied Chemical & Alkali Workers of America v Pittsburgh Plate Glass Co.* 404 US 157: 92 S Ct 383: 30 L Ed 2d 341

(1971). Further, it has been held that a retired federal civil service employee is not to be considered an employee for civil service purposes. See *Lancellotti v Office of Personnel Management,* 704 F2d 91 (CA 3, 1983).

In this case, plaintiff's status as a retired federal employee is clearly not one who works for hire. Under the federal civil service retirement act, 5 USC 8331 *et seq.*, which governs plaintiff's retirement benefits, plaintiff is an annuitant. An annuitant is defined in 5 USC 8331(9) as a *former* employee who meets all the requirements to receive an annuity. Further, unlike the treatment of pension rights under the Michigan retirement system, a federal worker's pension rights are not treated as contractual obligations. Rather, their entitlement to retirement benefits must be determined from the statute and regulations which govern them, in this case 5 USC 8331 *et seq.; Zucker v United States,* 758 F2d 637 (CA Fed, 1985), cert den — US —; 106 S Ct 129; 88 L Ed 2d 105 (1985).

However, plaintiff contends that he should be treated as an employee for purposes of 4 USC 111, despite his retirement status, because his retirement benefits constitute a form of deferred compensation. While the legislative history of the federal civil service retirement act lends some support to plaintiff's argument, we are still unpersuaded. The federal civil service retirement plan was enacted with the purpose of es'ablishing a deferred compensation plan to allow the federal government to compete with the private sector by offering an attractive retirement plan to federal employees. *Clark v United States,* 691 F2d 837, 842 (CA 7, 1982). Both the employee and the government contribute to the retirement fund. The eventual annuity that the retired employee re-

ceives is directly related to his earnings and years of service. See *Hogan v United States*, 513 F2d 170 (CA 6, 1975), cert den 423 US 836; 96 S Ct 62; 46 L Ed 2d 55 (1975). However, by statute, an annuitant is not considered an employee at the time he receives his annuity payments. Additionally, plaintiff has failed to show any express legislative intent or case authority to give a broad construction to the term employee as contained in 4 USC 111 to encompass retired employees. Indeed, we believe that had Congress so intended it would have clearly so provided. Therefore, we conclude, as did the Court of Claims, that 4 USC 111 has no application to plaintiff, since plaintiff cannot be considered an employee within the meaning of that act. Accordingly, the taxation of plaintiff's retirement benefits was not a violation of 4 USC 111.

Plaintiff also argues that under general federal case law, the imposition of a Michigan income tax on his federal retirement benefits is unlawful because it discriminates by source and burdens federal government activities. We cannot agree.

It is generally recognized that a tax may be held invalid, even if the tax burden does not fall directly on the United States, if it operates to discriminate against the federal government and those with whom it deals. See *Memphis Bank & Trust Co v Garner*, 459 US 392; 103 S Ct 692; 74 L Ed 2d 562 (1983). In determining the legality of statutory classifications which make a distinction between federal and nonfederal pensioners, an equal protection analysis has been applied. See *Clark v United States, supra*. The equal protection clause requires like treatment for persons similarly situated. However, a statute will be upheld against an equal protection attack if the distinctions bear a rational relationship to a legitimate

state end. See *In re Contempt of Stone*, 154 Mich App 121; 397 NW2d 244 (1986). In this case, as the party challenging the classification, plaintiff has the burden of showing that the classification is without any reasonable justification. *Halstead v City of Flint*, 127 Mich App 148; 338 NW2d 903 (1983), lv den 418 Mich 915 (1984). We do not believe that plaintiff has satisfied his burden in this case.

Under the Michigan income tax system, a class distinction is made between state retirees and all other retirees, including federal retirees. In our opinion, the attracting and retaining of qualified employees is a legitimate state objective which is rationally achieved by a retirement plan offering economic inducements. One such inducement to state employees is tax exempt status for their retirement benefits. The State of Michigan, as an employer, owes a special responsibility to its employees, which it does not owe to federal employees. The full tax exemption permitted by the MITA is simply intended to recognize that income tax exemption is an integral part of the retirement benefits conferred upon state employees. There is no indication that the MITA is aimed at discriminating against retirees by the source of their retirement benefits. Consequently, even if state and federal retirees are similarly situated, the state objective, as evidenced from the statutory scheme, is rational.

We also find that plaintiff's reliance on *Memphis Bank & Trust Co v Garner, supra*, is misplaced. In that case, the Supreme Court held invalid a Tennessee statute taxing bank earnings, which was defined to include interest on United States obligations but did not include interest on state obligations. However, in that case the Court was interpreting a federal statute which provided for a

broad exemption of federal obligations from state and local taxation. 31 USC 742. In this case, plaintiff can point to no statutory authority which prohibits the State of Michigan from taxing his retirement benefits.

Accordingly, we hold that the Court of Claims did not err in granting summary disposition to defendant and denying plaintiff's claim for an income tax refund.

Affirmed.

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 28th day of September, in the year of our Lord one thousand nine hundred and eighty-seven.

Present the Honorable DOROTHY COMSTOCK RILEY, Chief Justice; CHARLES L. LEVIN, JAMES H. BRICKLEY, MICHAEL F. CAVANAGH, PATRICIA J. BOYLE, DENNIS W. ARCHER, ROBERT P. GRIFFIN, Associate Justices

PAUL S. DAVIS,

Plaintiff-Appellant

v.

STATE OF MICHIGAN, DEPARTMENT OF TREASURY,

Defendant-Appellee

SC: 80836
COA: 88776
LC: 84-9451

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On order of the Court, the application for leave to appeal is considered, and it is hereby DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

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Certified on September 28, 1987, by;

/s/ CORBIN R. DAVIS, Clerk of the Supreme Court

ORAL OPINION OF COURT OF CLAIMS

PAUL S. DAVIS, Plaintiff

v.

STATE OF MICHIGAN, DEPARTMENT OF THE TREASURY, Defendant

FILE NO. 84-9451

Before the Honorable JAMES R. GIDDINGS, JUDGE

October 30, 1985

THE COURT: Well, it seems to me a pretty clear reading of the Act. I guess I'm not sure that it would be discriminatory anyway in terms of the source; but assuming that's the case, I don't believe Section 111 of Title 4 applies by its terms. This talks about compensation for personal services; for personal services as an officer or employee of the United States, and the Lancelotti Third Circuit case, 1983 says they're not an employee. And, I think presumably if they intended to cover the retired employees, that would have said so.

And, it's my -- I'm concluding from the cases cited by Mr. Davis, Plaintiff, that Hogan and Clark did not hold that they were employees. They talked about some other policy language which I do not disagree with; it couldn't really directly pertain here and Memphis Bank does not apply.

I mean this is not an obligation to the United States, this is -- I mean it's an obligation in a sense, but not in the sense talked about by Memphis -- by the Memphis case and -- So, that one just does not apply.

Under the circumstances, as far as I can see, the tax imposed by the Department of Treasury is proper and the Court will deny the Motion for Summary Disposition and grant Summary Disposition in favor of Department of Treasury.

MR. WARD: Thank you, your Honor. I'll prepare the Order.

THE COURT: That's all on the record in that matter.

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

PAUL S. DAVIS,

Plaintiff,

v NO. 84 9451

STATE OF MICHIGAN,
DEPARTMENT OF TREASURY

Defendant.

_____/

ORDER GRANTING SUMMARY DISPOSITION

At a session of the Court, held in the Ingham County Circuit Courtroom, City Hall, City of Lansing, Michigan on the 7th day of November, 1985.

PRESENT: Honorable JAMES R. GIDDINGS,
Circuit Court Judge, Presiding

The Plaintiff having filed a Motion for Summary Disposition under MCR 2.116(C)(10) and the Defendant having requested Summary Disposition under MCR 2.116(I)(2), the Court having considered the pleadings filed by the parties including the amended pleadings, the Court having considered the oral argument of the parties and the written

briefs filed by the parties, and the Court having rendered its oral Opinion from the bench on Wednesday, October 30, 1985, affirming the decision of the Revenue Commissioner denying the Plaintiff's request for refund for tax years 1979 through 1984.

IT IS HEREBY ORDERED AND ADJUDGED that in accordance with the Court's oral Opinion of October 30, 1985, Plaintiff's Motion for Summary Disposition is DENIED and Defendant's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that no costs be allowed to either party.

/s/ JAMES R. GIDDINGS

Honorable James R. Giddings
Circuit Court Judge

APPENDIX E



STATE OF MICHIGAN

IN THE COURT OF APPEALS

| | | |
|---|---|---|
| PAUL S. DAVIS, | ) | |
| | ) | |
| Plaintiff-Appellant | ) | DOCKET No. 88776 |
| | ) | |
| v. | ) | (Michigan Supreme Court No. 80836) |
| | ) | |
| STATE OF MICHIGAN, DEPARTMENT OF THE TREASURY, | ) | (Court of Claims No. 84-9451) |
| | ) | |
| Defendant-Appellee | ) | |
| | ) | |

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Paul S. Davis, Plaintiff-Appellant herein, appearing pro se, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of Michigan, entered on May 5, 1987.

This appeal is taken pursuant to 28 U.S.C. 1257(2).

PAUL S. DAVIS (P-12562)
Attorney for Appellant,
appearing pro se
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PROOF OF SERVICE

The undersigned, Paul S. Davis, Attorney for Plaintiff-Appellant, pro se, hereby certifies that he served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, in the case of Paul S. Davis v. State of Michigan, Department of the Treasury, on Ross H. Bishop, Esq., Assistant Attorney General, Attorney for Defendant-Appellee herein, on this 4th day of December, 1987, by delivering a copy thereof to his office.

Paul S. Davis (P-12562)
Attorney for Plaintiff-
Appellant, pro se

Receipt is acknowledged of a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, this 4th day of December, 1987.

Gail Zakrajsek, Secretary to
Ross H. Bishop
Assistant Attorney General
Attorney for Defendant-
Appellee

Rec'd at Court of Claims on 12-4-87 at 2:01 P.M.

APPENDIX F

STATUTORY PROVISIONS

Michigan Income Tax Act, Section 30 (1967 Public Act No. 281; M.C.L.A. 206.30; M.S.A. 7.557(130).

**§ 7.557(130) Taxable income of persons.]** Sec. 30. (1) "Taxable income" in the case of a person other than a corporation, an estate, or trust means adjusted gross income as defined in the internal revenue code subject to the following adjustments:

* * * * *

(h) Deduct to the extent included in adjusted gross income:

(i) Retirement or pension benefits received from a public retirement system of or created by an act of this state or a political subdivision of this state.

(ii) Any retirement or pension benefits received from a public retirement system of or created by another state or any of its political subdivisions if the income tax laws of the other state permit a similar deduction or exemption or a reciprocal deduction or exemption of a retirement or pension benefit received from a public retirement system of or created by this state or any of the political subdivisions of this state.

(iii) [Social security benefits as defined in section 86 of the internal revenue code.

(iv)] Retirement or pension benefits from any other retirement or pension system as follows:

(A) For a single return, the sum of not more than $7,500.00.

(B) For a joint return, the sum of not more than $10,000.00.

4 U.S.C. 111 (Section 4 of Act of April 12, 1939, codified on September 6, 1966; 80 Stat. 808).

**§ 111. Same; taxation affecting Federal employees; income tax**

**The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.**

Federal Civil Service Retirement Act (5 U.S.C. 8339(a).

**§ 8339. Computation of annuity**

**(a) Except as otherwise provided by this section, the annuity of an employee retiring under this subchapter is—**

**(1) 1½ percent of his average pay multiplied by so much of his total service as does not exceed 5 years; plus**

**(2) 1¾ percent of his average pay multiplied by so much of his total service as exceeds 5 years but does not exceed 10 years; plus**

**(3) 2 percent of his average pay multiplied by so much of his total service as exceeds 10 years.**

**However, when it results in a larger annuity, 1 percent of his average pay plus $25 is substituted for the percentage specified by paragraph (1), (2), or (3) of this subsection, or any combination thereof.**